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E.O. 12958: N/A

TAGS: PREL ETRD EINV PINS CA FAC

SUBJECT: PATRIOT ACT: CANADA LOOKING FOR LOW-KEY DIALOGUE

REF: (A) Vancouver 612; (B)OTTAWA 1445; (C) Vancouver 1450

¶1. (SBU)Summary and Action Request: As reported reftels, there is growing concern among certain consumer and union groups in Canada about the privacy effects of certain elements of the Patriot Act, primarily Section 215. While GoC experts believe that Patriot Act procedures are not incompatible with Canadian privacy legislation, the government feels increasing pressure to address the issue formally with the U.S. They would prefer to keep the issue in a non-confrontational channel and have asked us to consider some kind of working group to study the issue and respond to public concern. Post recommends that the two sides use the multidisciplinary New Partnership process, announced during the President's November 30 visit, as an umbrella for a low-key working group that could examine various aspects of U.S. and Canadian privacy legislation and report back to leaders. The modest investment of time required, at the expert level, would potentially prevent the issue from gaining political momentum and possibly creating substantial costs for US service providers. End summary and action request.

¶2. (SBU) On January 21, Pol and Econ officers met with Foreign Affairs Canada (FAC) legal staff and Treasury Board officials to discuss growing consumer and union concern within Canada to certain elements of the Patriot Act, primarily Section 215, and consider ways to address the issue bilaterally. Following the British Columbia Privacy Commissioner's report in November of 2004 (Ref C.), the Federal Privacy Commissioner has undertaken a review of the issues raised in B.C. The Prime Minister also asked the Treasury Board to address the potential impact of the Patriot Act on Canadian public contracting at the federal level. Treasury Board has asked all Canadian federal agencies to review their contracting and report back on any potential issues by the end of January, although that deadline is likely to slip.

¶3. (SBU) FAC and Treasury Board legal experts who have examined the issue do not believe that the Patriot Act raises any major potential conflicts with respect to Canada's federal privacy legislation, which is much more operationally flexible than that of the EU. They commented that Canada's and U.S. views on these issues in multilateral fora have been closely aligned to date. At the provincial level, privacy commissioners outside of BC have not shown much interest in the issue, and seem content to wait for the Federal privacy commissioner to pronounce upon it.

¶4. (SBU) However, FAC officials predicted that "this issue will not go away" and fear that it has the potential to become a new bilateral irritant. Absent a coherent bilateral response, the GoC may feel increasing pressure to restrict contracting with U.S. firms subject to Patriot Act rules. (Comment: privacy issues are a hot political topic for the NDP and the Government's minority status could potentially hamper its efforts to manage the agenda on this issue. End comment.)

¶5. (SBU) FAC and Treasury Board proposed that we find some way to structure a dialogue on this issue, possibly within an existing bilateral forum, which will allow the GoC to show that it is taking action. They suggest exchanging views and information on a range of privacy-related topics in a low-key, non-confrontational manner, rather than focusing on the Patriot Act. GoC officials anticipate that they will need to find a channel for addressing the issue within the next couple of months, as federal agencies complete their reviews. They had no specific format to propose, however, and asked us to consult with Washington agencies about possible formats.

¶6. (SBU) ACTION REQUEST: Post believes that this issue would fit ideally into the US-Canada side of the emerging North American Partnership agenda and working groups, as the

subject matter covers both law enforcement and substantial economic/trade issues (in its implications for procurement). Allaying concerns about the Patriot Act would, at least for U.S. IT firms, be a practical step toward "keeping borders open for business but closed to terrorism" as the President and PM promised in their November 30 statement. The two sides could include in the projected March announcements a "cross-border privacy" working group at the expert level to examine and compare our respective legislation. Much of the work could be conducted by DVC; for example, we would propose a DVC with HHS experts to explain U.S. medical records privacy legislation to Health Canada, Treasury Board, Privacy Commissioner, and other interested officials. The outcome could be a joint report that could be used by legal and public affairs officials on both sides of the border to address the questions raised in Canada. We should be able to counter pressure on this issue by citing numerous areas of common legal ground as well as emphasizing the long tradition of privacy protection in U.S. constitutional law and other statutes. End Action Request.

¶7. (SBU) Treasury Board officials are considering whether to follow up our preliminary, informal discussion by inviting the Ambassador to meet with Treasury Board President Reg Alcock to discuss the issue further. Ideally, we would like to be able to use such a meeting to propose a format to continue the bilateral dialogue. Post would therefore appreciate consideration of this request by Washington agencies in the near future.

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